

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-02-KC-596
	)	
American Family Association	)	NAL/Acct.No. 200232560027
	)	
Licensee of Radio Station KAUF in Kennett, Missouri	)	FRN 0005-0259-11
	)	
Tupelo, Mississippi		

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: September 20, 2002**

By the Enforcement Bureau, Kansas City Office:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find American Family Association (“American”), licensee of radio station KAUF, Kennett, Missouri, apparently liable for a forfeiture in the amount of nine thousand dollars (\$9,000) for willful violation of Sections 11.35(a), 73.3527(e)(4), 73.3527(e)(7) and 73.3527(e)(8) of the Commission's Rules (“Rules”).<sup>1</sup> Specifically, we find American apparently liable for failure to maintain operational Emergency Alert System (“EAS”) equipment, and failure to maintain all required items in the station’s public inspection file.

**II. BACKGROUND**

2. On July 17, 2002, an agent from the Commission’s Kansas City Field Office inspected FM station KAUF located in Kennett, Missouri. The agent inspected the station’s EAS equipment and observed that both EAS receivers were turned off and that, when turned on, both receivers were tuned to the frequency 87.5 MHz. As a result, there was no monitoring of the two required EAS sources. The station could not produce the EAS Operating Handbook, and the station’s log showed no record of EAS equipment repairs, and no logging of EAS tests since the year 2000. Additionally, the latest ownership report, a copy of The Public and Broadcasting, and current issues/programs lists were not available in the public file.

**III. DISCUSSION**

3. Section 11.35(a) of the Rules requires that broadcast stations install EAS equipment such that monitoring and transmitting functions are available during the times the stations are in operation. As part

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<sup>1</sup> 47 C.F.R §§ 11.35(a), 73.3527(e)(4), 73.3527(e)(7) and 73.3527(e)(8).

of the EAS monitoring requirement, Section 11.52 of the Rules<sup>2</sup> requires broadcast stations to monitor two EAS sources as specified in the State EAS Plan and FCC Mapbook. At the inspection on July 17, 2002, station KAUF's two EAS receivers were turned off and, when turned on, were tuned to default settings rendering them unable to monitor the required EAS sources. Section 11.35(b) of the Rules<sup>3</sup> provides that should any EAS equipment become defective, that entries be made in the station's log indicating the date and time the equipment was removed and restored to service. KAUF's station log had no entries concerning EAS equipment malfunctions.

4. Section 73.3527(e)(4) of the Rules requires that a copy of the most recent, complete ownership report filed with the FCC for the station, any statements filed with the FCC certifying that the current report is accurate, and all related materials be available in the public file. On July 17, 2002, there were no copies of any ownership reports available in the public file.

5. Section 73.3527(e)(7) of the Rules requires a copy of The Public and Broadcasting be available in the public file. The manual was not available at the time of inspection on July 17, 2002.

6. Section 73.3527(e)(8) of the Rules requires a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list shall include a brief narrative describing what issues were giving significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration and title of each program in which the issue was treated. The lists shall be retained in the public inspection file until final action has been taken on the station's next renewal application. The lists for the year 2001 and the first quarter of 2002 were not available for inspection on July 17, 2002.

7. Based on the evidence before us, we find that on July 17, 2002, American willfully<sup>4</sup> violated Sections 11.35(a), 73.3527(e)(4), 73.3527(e)(7) and 73.3527(e)(8) of the Rules by failing to maintain operational EAS equipment, and by failing to maintain a current ownership report, The Public and Broadcasting, and issues-programs lists in the station's public inspection file.

8. Pursuant to Section 1.80(b)(4) of the Rules, the base forfeiture amount is \$8,000 for EAS equipment not being operational, and \$10,000 for violation of the public file rules.<sup>5</sup> Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), requires us to take into account "... the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require."<sup>6</sup>

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<sup>2</sup> 47 C.F.R. § 11.52.

<sup>3</sup> 47 C.F.R. § 11.35(b).

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4).

<sup>6</sup> 47 U.S.C. § 503 (b)(2)(D).

Because KAUF's EAS equipment was installed, albeit turned off such that it was incapable of receiving EAS alerts, a downward adjustment of the base forfeiture amount for this violation from \$8,000 to \$4,000 is warranted. Because KAUF's public file contained a portion of the required items, a downward adjustment of the base forfeiture amount for this violation from \$10,000 to \$5,000 is warranted. Considering the entire record and applying the statutory factors listed above, this case warrants a \$9,000 forfeiture.

#### **IV. ORDERING CLAUSES**

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>7</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>8</sup> American Family Association is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of nine thousand dollars (\$9,000) for willful violation of Sections 11.35(a), 73.3527(e)(4), 73.3527(e)(7) and 73.3527(e)(8) of the Rules, by failing to maintain operational EAS equipment, and by failing to maintain a current ownership report, The Public and Broadcasting and issues-programs lists in the station's public inspection file.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, American Family Association SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FRN and *NAL*/Acct. No. referenced in the letterhead above.

12. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE *NAL*/Acct. No. and FRN referenced in the letterhead above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this *NAL* under an installment plan should be sent

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<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by regular and Certified Mail Return Receipt Requested to American Family Association at P. O. Drawer 2440, Tupelo, Mississippi 38803.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney  
District Director, Kansas City Office  
Enforcement Bureau

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<sup>9</sup> See 47 C.F.R. § 1.1914.